UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

DUANE MORRIS LLP
Walter J. Greenhalgh, Esq.
Ugo Colella, Esq. (*admitted pro hac vice*)
John J. Zefutie, Jr., Esq.
The Legal Center
1037 Raymond Boulevard, Suite 1800
Newark, New Jersey 07102
P: 973-424-2000
F: 973-424-2001
Email: wjgreenhalgh@duanemorris.com
Email: ucolella@duanemorris.com
Email: jjzefutie@duanemorris.com

Counsel for Defendant/Counterclaimant Ketan Patel

In re:

VOICEPULSE, INC.,

Debtor.

Chapter 11

Case No. 16-25075 (MBK)

Judge: Honorable Michael B. Kaplan

VOICEPULSE, INC. and RAVI SAKARIA,

Plaintiffs,

v.

KETAN P. PATEL,

Defendant.

Adv. Pro. No. 16-1714 (MBK)

ANSWER, SEPARATE DEFENSES, AND COUNTERCLAIMS OF DEFENDANT KETAN P. PATEL

Ketan P. Patel ("Mr. Patel") as for his Answer to the First Amended Complaint for Avoidance of Preferential Payments, Breach of Contract, and Related Relief (the "Amended Complaint") by VoicePulse, Inc. (the "Debtor") and Ravi Sakaria ("Mr. Sakaria") (collectively, "Plaintiffs"), states the following:

AS TO PARTIES AND BACKGROUND

1. Mr. Patel denies the allegations contained in the first sentence of Paragraph 1 of the Amended Complaint. Mr. Patel admits the allegations contained in the second sentence of Paragraph 1 of the Amended Complaint.

2. Mr. Patel denies the allegations contained in Paragraph 2 of the Amended Complaint.

3. Mr. Patel denies the allegations contained in Paragraph 3 of the Amended Complaint.

4. Mr. Patel denies the allegations contained in Paragraph 4 of the Amended Complaint.

5. Mr. Patel admits the allegations contained in Paragraph 5 of the Amended Complaint, and he respectfully refers the Court to the publicly-filed Verified Complaint in the Litigation (as defined in the Amended Complaint) for a complete recitation of Mr. Patel's allegations of ownership, as well as Mr. Sakaria's history of misusing the Debtor's assets.

6. Mr. Patel admits that he and the Plaintiffs agreed to resolve the Litigation and executed the Settlement Agreement dated November 23, 2010. Mr. Patel denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 6 of the Amended Complaint.

7. Mr. Patel denies Plaintiffs' characterizations of the terms of the Settlement Agreement, and refers the Court to the Settlement Agreement for a complete recitation of its terms. Mr. Patel denies the remainder of the allegations contained in Paragraph 7 of the Amended Complaint.

8. Mr. Patel admits that the Settlement Agreement contains confidentiality and non-disparagement clauses, but he denies Plaintiffs' characterizations of those provisions. Mr. Patel respectfully refers to the Court to the Settlement Agreement for a complete recitation of its terms.

9. Mr. Patel admits that both the Debtor and Mr. Sakaria agreed to certain payments in order to resolve the Litigation, but he denies Plaintiffs' characterizations of those payments and the timeliness of the payments. Mr. Patel respectfully refers the Court to the Settlement Agreement for a recitation of its terms.

10. Mr. Patel admits the allegations contained in Paragraph 10 of the Amended Complaint, but denies Plaintiffs' characterizations of the Settlement Agreement. Mr. Patel respectfully refers the Court to the Settlement Agreement for a recitation of its terms.

11. Mr. Patel admits that the UCC-1 lapsed, but denies the remaining allegations of Paragraph 11 of the Amended Complaint as legal conclusions to which no response is required.

12. Mr. Patel denies knowledge and information sufficient to form a belief as the truth of the allegations contained in Paragraph 12 of the Amended Complaint.

13. Mr. Patel admits that he filed his initial Limited Objection on September 9, 2016, and states that the Limited Objection was authorized by order of the Court. Mr. Patel denies the remainder of the allegations contained in Paragraph 13 of the Amended Complaint.

14. Mr. Patel denies the allegations contained in Paragraph 14 of the Amended Complaint.

15. Mr. Patel admits the allegations contained in Paragraph 15 of the Amended Complaint.

16. Mr. Patel denies the allegations contained in Paragraph 16 of the Amended Complaint.

17. Mr. Patel denies the allegations contained in Paragraph 17 of the Amended Complaint.

18. Mr. Patel denies the allegations contained in Paragraph 18 of the Amended Complaint.

19. Mr. Patel denies the allegations contained in Paragraph 19 of the Amended Complaint.

20. Mr. Patel admits that he is the first cousin of Mr. Sakaria and that he had an ownership interest the Debtor. The remaining allegations in Paragraph 20 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, those remaining allegations are denied.

21. Mr. Patel admits that he currently resides at 8 Maple Street, Chatham, New Jersey. The remaining allegations in Paragraph 21 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, those allegations are denied.

AS TO JURISDICTION AND VENUE

22. The allegations contained in Paragraph 22 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 22 of the Amended Complaint because, as indicated by the Court in connection with Mr. Patel's pending Motion to Withdraw the Reference (Adv. Pro. ECF No. 10) many claims in the Amended Complaint are non-core and therefore outside the jurisdiction of this Court.

23. The allegations contained in Paragraph 23 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr.

Patel denies the allegations contained in Paragraph 23 of the Amended Complaint because, as indicated by the Court in connection with Mr. Patel's pending Motion to Withdraw the Reference (Adv. Pro. ECF No. 20) many claims in the Amended Complaint are non-core and therefore outside the jurisdiction of this Court.

24. The allegations contained in Paragraph 24 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 24 of the Amended Complaint.

AS TO COUNT ONE
(Avoidance of Insider Preferential Payments Pursuant to 11 U.S.C. § 547(b))

25. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-24 above as if fully set forth herein.

26. The allegations contained in Paragraph 26 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 26 of the Amended Complaint.

27. Mr. Patel admits the allegations contained in Paragraph 27 of the Amended Complaint.

28. Mr. Patel denies the allegations contained in Paragraph 28 of the Amended Complaint.

29. The allegations contained in Paragraph 29 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 29 of the Amended Complaint.

30. The allegations contained in Paragraph 30 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 30 of the Amended Complaint.

31. The allegations contained in Paragraph 31 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies knowledge and information sufficient to form a belief as the truth of the allegations contained in Paragraph 31 of the Amended Complaint.

32. The allegations contained in Paragraph 32 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 32 of the Amended Complaint.

33. The allegations contained in Paragraph 33 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 33 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 33.

AS TO COUNT TWO
(11 U.S.C. § 502)

34. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-33 above as if fully set forth herein.

35. Mr. Patel denies Plaintiffs' characterizations of the payments made pursuant to the Settlement Agreement as "Preference Payments." Mr. Patel admits he has not turned over any payments made pursuant to the Settlement Agreement, and he affirmatively states he was never requested to do so, and he is under no legal obligation to do so.

36. The allegations contained in Paragraph 36 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 36 of the Amended Complaint. Further, Mr.

Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 36.

AS TO COUNT THREE
(Breach of Contract)

37. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-36 above as if fully set forth herein.

38. Mr. Patel admits the allegations contained in Paragraph 38 of the Amended Complaint.

39. Mr. Patel admits that the Settlement Agreement contains confidentiality and non-disparagement clauses, but he denies Plaintiffs' characterizations of those provisions. Mr. Patel respectfully refers to the Court to the Settlement Agreement for a complete recitation of its terms.

40. Mr. Patel denies the allegations contained in Paragraph 40 of the Amended Complaint.

41. Mr. Patel denies the allegations contained in Paragraph 41 of the Amended Complaint.

42. Mr. Patel denies the allegations contained in Paragraph 42 of the Amended Complaint.

43. Mr. Patel denies the allegations contained in Paragraph 43 of the Amended Complaint.

44. Mr. Patel denies the allegations contained in Paragraph 44 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 44.

AS TO COUNT FOUR
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

45. Mr. Patel realleges and incorporates each of the averments contained in Paragraph 1-44 as if fully set forth herein.

46. Mr. Patel admits that he received the payments due pursuant to the Settlement Agreement, but denies Plaintiffs' characterizations regarding those payments.

47. Mr. Patel denies the allegations contained in Paragraph 47 of the Amended Complaint.

48. Mr. Patel denies the allegations contained in Paragraph 48 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 48.

AS TO COUNT FIVE
(Unjust Enrichment)

49. Mr. Patel realleges and incorporates each of the averments contained in Paragraph 1-48 as if fully set forth herein.

50. Mr. Patel admits that he received the payments due pursuant to the Settlement Agreement, but denies Plaintiffs' characterizations regarding those payments.

51. Mr. Patel denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Amended Complaint.

52. Mr. Patel denies the allegations contained in Paragraph 52 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 52.

AS TO COUNT SIX
(Tortious Interference with Contractual Relations and Prospective Economic Advantage)

53. Mr. Patel realleges and incorporates each of the averments contained in Paragraph 1-52 as if fully set forth herein.

54. Mr. Patel denies the allegations contained in Paragraph 54 of the Amended Complaint.

55. Mr. Patel denies the allegations contained in Paragraph 55 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 55.

AS TO COUNT SEVEN
(Slander)

56. Mr. Patel realleges and incorporates each of the averments contained in Paragraph 1-55 as if fully set forth herein.

57. Mr. Patel denies the allegations contained in Paragraph 57 of the Amended Complaint.

58. Mr. Patel admits that he caused the Limited Objection to be filed in the above-referenced Chapter 11 Proceeding, but he denies the remaining allegations of Paragraph 58 of the Amended Complaint.

59. Mr. Patel denies the allegations contained in Paragraph 59 of the Amended Complaint.

60. Mr. Patel denies the allegations contained in Paragraph 60 of the Amended Complaint.

61. Mr. Patel denies the allegations contained in Paragraph 61 of the Amended Complaint.

62. Mr. Patel denies the allegations contained in Paragraph 62 of the Amended Complaint.

63. Mr. Patel denies the allegations contained in Paragraph 63 of the Amended Complaint.

64. The allegations contained in Paragraph 64 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 64 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 64.

AS TO COUNT EIGHT
(11 U.S.C. § 105)

65. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-64 as if fully set forth herein.

66. Mr. Patel denies the allegations contained in Paragraph 66 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 66.

AS TO COUNT NINE
(Fed R. Bankr. P. 7008(b) and 7054)

67. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-66 as if fully set forth herein.

68. Mr. Patel denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Amended Complaint.

69. The allegations contained in Paragraph 69 of the Amended Complaint are legal conclusions to which no response is required. To the extent a response is deemed necessary, Mr.

Patel denies the allegations contained in Paragraph 69 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 69.

AS TO COUNT TEN
(Reservation of Rights)

70. Mr. Patel realleges and incorporates each of the averments contained in Paragraphs 1-69 as if fully set forth herein.

71. The allegations in Paragraph 71 of the Amended Complaint are not factual allegations that can be admitted or denied by Mr. Patel. As such, no response is required. To the extent a response is deemed necessary, Mr. Patel denies the allegations contained in Paragraph 71 of the Amended Complaint. Further, Mr. Patel denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE clause that follows Paragraph 71.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Amended Complaint fails to state any claims against Mr. Patel upon which relief can be granted.

SECOND SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, by Plaintiffs' own breach and/or anticipatory repudiation of the Settlement Agreement with Mr. Patel.

THIRD SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, by Plaintiffs' unclean hands.

FOURTH SEPARATE DEFENSE

To the extent Plaintiffs may succeed on any of their claims, their damages, if any, are subject to the doctrines of set off and recoupment.

FIFTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred by the applicable statutes of limitations.

SIXTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred by the doctrine of laches.

SEVENTH SEPARATE DEFENSE

The payments made to Mr. Patel as alleged in the Amended Complaint were intended by Plaintiffs and Mr. Patel to be a contemporaneous exchange for new value given to the Debtor.

EIGHTH SEPARATE DEFENSE

The payments made to Mr. Patel as alleged in the Amended Complaint were for debt incurred in the Debtor's ordinary course of business.

NINTH SEPARATE DEFENSE

Mr. Patel and Mr. Sakaria, at the time they entered into the Settlement Agreement, did not have a close relationship.

TENTH SEPARATE DEFENSE

The Settlement Agreement was the result of an arm's length negotiations between experienced counsel.

ELEVENTH SEPARATE DEFENSE

At the time he executed the Settlement Agreement in 2010, Mr. Patel relinquished his equity ownership in the Debtor and has not, and could not, exert any control or influence over the Debtor, its principal, and/or any of their employees.

TWELFTH SEPARATE DEFENSE

The payments made to Mr. Patel as alleged in the Amended Complaint were not on account of an antecedent debt.

THIRTEENTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, by the doctrine of waiver.

FOURTEENTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, by the doctrine of estoppel.

FIFTEENTH SEPARATE DEFENSE

Neither the Debtor, nor Mr. Sakaria, has suffered any damages for the alleged breach of contract.

SIXTEENTH SEPARATE DEFENSE

Mr. Patel acted in good faith, without bad intent or bad motive, and at all times in accordance with his contractual rights bargained for at arm's length with Plaintiffs.

SEVENTEENTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, because Mr. Patel never made any false statement to any third party about Plaintiffs or Plaintiffs' businesses.

EIGHTEENTH SEPARATE DEFENSE

The claims in the Amended Complaint are barred, in whole or in part, by doctrine of the litigation privilege and any other applicable privilege.

NINETEENTH SEPARATE DEFENSE

The Court does not have jurisdiction to adjudicate Plaintiffs' non-core claims.

DEMAND FOR A JURY TRIAL

Mr. Patel demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendant Ketan P. Patel prays that, upon final judgment, he has judgment as follows:

1. Judgment dismissing the Amended Complaint with prejudice;

2. Judgment awarding Mr. Patel his reasonable attorney's fees, costs, and expenses incurred in defending against the Amended Complaint and enforcing his rights under the Subpoena; and

3. Judgment awarding Mr. Patel such other and further relief, both at law and in equity, that the Court deems just and proper.

COUNTERCLAIMS

Defendant/Counterclaimant Ketan P. Patel ("Mr. Patel"), hereby counterclaims against Plaintiffs/Counterclaim Defendants VoicePulse, Inc. (the "Debtor") and Ravi Sakaria ("Mr. Sakaria") (collectively, "Plaintiffs") as follows:

THE PARTIES

1. Mr. Patel was the co-owner and co-founder of the Debtor and, as such, had equity ownership in the Debtor before 2010. He currently resides at 8 Maple Street, Chatham, New Jersey 07928. In *Ketan Patel v. VoicePulse, Inc. & Ravi Sakaria*, Docket No. MDX-C-208-10 (the "Litigation"), Mr. Patel brought claims against the Debtor and Mr. Sakaria for, among other things, breach of contract, violation of the Oppressed Minority Shareholder Statute, N.J.S.A. 14A:12-7, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, conversion, and unjust enrichment. Those claims arose out of, among other things, Mr. Sakaria's (a) gross misuse of company assets (*i.e.*, gambling away tens of thousands of dollars in Las Vegas), (b) malicious attempt to deny Mr. Patel his ownership/equity interests in the Debtor, and (c) improper attempt to oust Mr. Patel from his then-position as chief operating officer of the Debtor.

2. Mr. Sakaria is Mr. Patel's first cousin. Upon information and belief, Mr. Sakaria currently resides at 41 Reed Drive South, West Windsor, New Jersey 08550. He is a co-founder of the Debtor, and currently is the Debtor's president, chief executive officer, and sole shareholder. He exerts complete and total control over the Debtor and its finances.

3. The Debtor is a closely held New Jersey corporation that was formed in or about 2003. Upon information and belief, the Debtor's principal place of business is 1095 Cranbury South River Road, #16, Jamesburg, New Jersey 08831. Its business is providing voice over Internet protocol ("VOIP") service. Generally, VOIP services allow phone calls using computer

networks like the Internet, and may also permit video messaging and text messaging. Although the Debtor supposedly explored potentially expanding into areas such as binary option trading platforms and online dating, the Debtor remains within the VOIP space. As alleged below, the Debtor is Mr. Sakaria's alter ego, and on many occasions, Mr. Sakaria used the Debtor and its assets to finance his lavish lifestyle, including online gambling, home remodeling projects, gym memberships, luxury automobiles, and international excursions with his friends and family. Many of these expenditures were incurred when the Debtor alleges it was insolvent.

4. Mr. Sakaria and the Debtor are alter egos and/or agents of one another. Since at least 2010 (and likely even earlier), Mr. Sakaria used the Debtor and its assets as his personal piggy bank. Mr. Sakaria made no distinction between his own pocketbook and the Debtor's pocketbook, often using corporate assets to pay for personal expenses and fund luxuries such high-end SUV leases for his family and non-business excursions to Las Vegas, South America, and elsewhere. He even used the Debtor's funds to shield purchases from his wife and used Debtor funds to buy pet food (live crickets) for his son's pet. Mr. Sakaria failed to properly capitalize the Debtor, diverting to himself a large annual salary while the Debtors revenues and customer base continued to suffer.

5. Mr. Sakaria ignored corporate formalities during the day-to-day operation of the Debtor's business. Mr. Sakaria does not keep receipts for many of his purchases yet claims that they are business expenses. Mr. Sakaria states under oath in his bankruptcy petition that he has loaned the Debtor money, but no promissory note or other loan document or agreement is in place to memorialize the alleged loan(s).

6. According to Mr. Sakaria, no corporate resolutions have been passed (other than the resolution to file for bankruptcy); no executive team is in place; and reimbursements to Mr.

Sakaria for alleged business-related expenses are made without expense reports. Mr. Sakaria, and Mr. Sakaria alone, determines what is a reimbursable business expense and he acts accordingly. Bank records produced by the Debtor in the companion Chapter 11 proceeding demonstrate that even during the period when the Debtor allegedly was insolvent (August 2015 to present), Mr. Sakaria used corporate funds to pay down personal credit card balances, make lease payments on his Cadillac Escalade luxury SUV, and to fund his online gambling activity. During that period of insolvency, Mr. Sakaria siphoned at least $65,000 of corporate assets for his own personal use, in addition to drawing his exorbitant $400,000 annual salary.

7. Most recently, the Debtor has submitted a motion to approve a sale of assets to a so-called holding company (owned by a personal friend), which will pay $30,000 for VoicePulse's assets and then make $5,000 monthly payments thereafter for several years. Even though the Bankruptcy Court recently reduced Mr. Sakaria's annual salary from $400,000 to $260,000, Mr. Sakaria's proposed employment agreement guarantees him a $400,000 annual salary. The proposed purchase agreement is a sham designed to eliminate Mr. Patel's compensation pursuant to the Settlement Agreement while at the same time permitting Mr. Sakaria to continue making what he was making pre-petition.

8. Adhering to the fiction that the Debtor is anything but a personal business conduit for Mr. Sakaria fosters abuse of the corporate structure and the protections afforded to legitimate corporations that are properly managed. The Debtor is merely a façade for Mr. Sakaria's operations. Equity cannot permit the corporate form to be used to wall-off the personal assets of Mr. Sakaria in satisfying any judgment, especially since the Debtor's assets and good will were used to finance Mr. Sakaria's luxurious lifestyle over many years.

JURISDICTION AND VENUE

9. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

10. The district court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b).

11. Venue is proper before this Court pursuant to 28 U.S.C. § 1409(a).

FACTS

A. Mr. Patel and Mr. Sakaria Establish the Debtor's Business in 2003.

12. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

13. In 2003, Mr. Patel was a software engineer for PhaseForward, a company located in Waltham, Massachusetts. He lived in the Boston area at that time, and he earned a salary of roughly $67,000 per year.

14. Mr. Patel is Mr. Sakaria's cousin. While Mr. Patel lived in Boston, Mr. Sakaria discussed with Mr. Patel his desire to form a company that provided VOIP services to businesses and residences primarily in the United States. Mr. Sakaria eventually persuaded Mr. Patel to leave his job at PhaseForward and join him as a co-owner and co-founder of the Debtor with an equity interest in the Debtor.

15. During the first year of the Debtor's business, Mr. Patel and Mr. Sakaria worked in the basement of Mr. Sakaria's townhouse. Neither of them drew a salary that first year, despite working fourteen-hour days. As Messrs. Patel and Sakaria continued to work to establish the Debtor's business from Mr. Sakaria's basement, they attracted paying customers to their VOIP platform and website, which Mr. Patel had created. Mr. Patel and Mr. Sakaria agreed to re-invest earnings into the company during its initial period of operation. To the extent money would be

taken out of the company, each owner and founder (that is, Mr. Patel and Mr. Sakaria) would be entitled to an equal share of such withdrawals.

16. During seven years of hard work, Debtor's business and revenues grew to a point where it had relocated into office space and hired employees. Mr. Patel's and Mr. Sakaria's salaries were substantially similar and were drawn through Debtor's payroll. Mr. Patel's salary in 2010 amounted to $2,400 per week ($124,800 annually).

17. Mr. Patel's responsibilities expanded to include total control over the Debtor's day-to-day operations. He was the chief operating officer of Debtor at least as early as May 2004, approximately one year after Debtor's formation. As of 2007-2008, all employees reported to Mr. Patel, and Mr. Patel held weekly staff meetings to discuss Debtor's business. Mr. Sakaria handled Debtor's finances.

18. In 2009, Mr. Patel and Mr. Sakaria agreed to hire an experienced management team to operate the Debtor's business. Once that new management team was in place, both Mr. Patel and Mr. Sakaria, as co-founders and co-owners of the company with equal equity in the Debtor, would continue to receive compensation.

19. Thus, Mr. Patel and Mr. Sakaria jointly interviewed candidates and agreed to hire Chris Silk ("Mr. Silk") as the Debtor's chief executive officer and Mark Carter ("Mr. Carter") as the Debtor's chief financial officer.

B. The Debtor's New Management Team Discovers Mr. Sakaria's History of Misusing Corporate Assets.

20. Shortly after Mr. Silk and Mr. Carter were hired, they discovered the financial condition of the Debtor was in disarray. Not only had Mr. Sakaria received hundreds of thousands of dollars in "reimbursements" without submitting a single expense report, but tens of thousands of dollars that rightfully belonged to the Debtor were instead improperly used by Mr. Sakaria for

his own personal gain. For example, Mr. Sakaria used company funds for lavish casino stays (*e.g.*, a whopping $55,000 tab at the Bellagio casino in Las Vegas) and for significant online poker activity.

21. The new management team also discovered that Mr. Sakaria had failed to file federal and state tax returns for several years, and that he similarly failed to pay certain fees due and owing to the Federal Communications Commission ("FCC").

22. The new management team informed Mr. Patel and Mr. Sakaria—the co-founders and co-owners of the company—of the critical financial status of the Debtor in a written memorandum circulated in or about February 2010. It was decided that the best way to handle the Debtor's financial crisis was for Mr. Sakaria to exit the company by having the Debtor sell its assets to a new venture co-owned by Mr. Patel and the new management team. To that end, from February 2010 through August 2010, the parties negotiated the terms of an asset purchase agreement.

23. In September 2010, however, Mr. Sakaria abruptly ceased negotiations and terminated Messrs. Silk and Carter. One month later, Mr. Sakaria purported to terminate Mr. Patel and claimed, contrary to the parties' longstanding understanding and contrary to Mr. Sakaria's representations to third parties, that Mr. Patel had no equity interest in the Debtor.

C. Mr. Patel Commences the Litigation in 2010, and the Parties Enter Into the Settlement Agreement.

24. Mr. Patel immediately commenced the Litigation against the Debtor and Mr. Sakaria personally in the Superior Court of New Jersey, Chancery Division, Middlesex County. *See Patel v. Ravi Sakaria and VoicePulse, Inc.*, Docket No. MDX-C-208-10.

25. The Chancery Court entered a temporary restraining order directing Mr. Sakaria to continue paying Mr. Patel his regular salary, and the court expedited discovery with regard to Mr. Patel's ownership of the Debtor.

26. The parties exchanged documents. Mr. Sakaria was deposed and, among other things, admitted that his resume contained misrepresentations ("embellished" was his word) about his background, education, and the revenues of the Debtor. In November of 2010, approximately 30 days after the Litigation was commenced, Mr. Patel, Mr. Sakaria, and the Debtor agreed to resolve their disputes and entered into the Settlement Agreement, pursuant to which Mr. Patel was to receive two initial payments, and then subsequent monthly payments from the Debtor for a period of six years. Mr. Patel also executed a Waiver of Equity and Stock Ownership Rights.

27. Since January 2012, Mr. Patel received payments pursuant to the Settlement Agreement, but the Debtor defaulted on many occasions and made the required monthly payments during the cure period specified in the Agreement.

D. Approximately Six Years Later, the Debtor Files for Chapter 11 Bankruptcy Protection.

28. On August 5, 2016 (the "Petition Date"), after missing another monthly payment and requiring another default notice, those payments ceased as Debtor had initiated these proceedings pursuant to Chapter 11 of the Bankruptcy Code. In his Schedule E/F, the Debtor listed over $1,000,000 in unsecured debt.

29. Following a hearing on first day matters, Michael B. Kaplan, U.S.B.J. entered an Interim Order Authorizing Use of Cash Collateral which permitted, among other things, use of cash collateral to allow the Debtor to continue paying payroll and employee costs. Included in that payroll was Mr. Sakaria's salary, which had ballooned from approximately $125,000 in 2010 to $400,000 despite claims of decreasing revenues and allegations of insolvency.

30. Taken aback by that amount, the Court ordered that any creditor or interested party that had an objection to the continued use of cash collateral may file an objection. Thus, on September 9, 2016, Mr. Patel filed a Limited Objection focused only on the amount of Mr. Sakaria's salary.

31. To protect his rights as a creditor and former owner of the Debtor, Mr. Patel also issued Subpoenas pursuant to Fed. R. Bankr. P. 2004 to both Mr. Sakaria and Dean Koehler, C.P.A. Mr. Koehler was, until recently, Mr. Sakaria's personal accountant, and he currently serves as the accountant for the Debtor. Mr. Koehler was the accountant for the Debtor long before the Bankruptcy proceeding was initiated.

32. On September 15, 2016, this Court granted Mr. Patel's Limited Objection to the use of the cash collateral to the extent that Mr. Sakaria paid himself an exorbitant $8,000 per week ($400,000/year) salary while the Debtor supposedly was insolvent and experienced a dwindling customer base and falling revenues. Thus, in a Second Interim Order Authorizing Debtor's Use of Cash Collateral, this Court reduced Mr. Sakaria's salary from approximately $400,000 per year to $260,000 per year.

33. Since that time, the Debtor and Mr. Sakaria sued Mr. Patel, and they moved to quash the Rule 2004 Subpoenas, which Mr. Patel was forced to oppose and ultimately defeat. Pursuant to those Subpoenas, Mr. Koehler and Mr. Sakaria were deposed on November 16 and November 17, respectively.

E. Since Settling the Litigation in 2010, Mr. Sakaria Continued to Ignore Corporate Formalities and Used the Debtor As His Personal Piggy Bank to the Detriment of Mr. Patel.

34. As far back as 2011, Mr. Sakaria used the Debtor's operating account at Wells Fargo as his personal piggy bank, looting the company of thousands of dollars over the years to the detriment of Mr. Patel.

35. More specifically, since 2011, Mr. Sakaria used the Debtor's money to fund his lifestyle, racking up charges in the tens of thousands of dollars for: online gambling; trips to Las Vegas and strip clubs in that city; a Cadillac Escalade; car washes; groceries; pet food; paying down balances on his personal credit card; new flooring for his house; international travel excursions to Brazil and Puerto Rico; and purchases of clothing, watches, a squash racket, and golf equipment for himself.

36. Mr. Sakaria also transferred tens of thousands of dollars from the Debtor's operating account to his personal brokerage account as well as his personal checking account.

37. None of these uses of the Debtor's money had anything to do with the Debtor or its business. In fact, several of these purchases took place within the time period during which both the Debtor and Mr. Sakaria allege the Debtor was insolvent, including using Debtor money for online gambling just days before the Debtor filed for Chapter 11 protection.

38. The Debtor and Mr. Sakaria claim that the Debtor was insolvent in August 2015.

39. Yet, Mr. Sakaria continues to use company assets for online gambling, paying off a personal credit card, and purchases at the Apple store, various convenient stores, local pizzerias, camera equipment, and international non-business travel.

40. Mr. Sakaria exerts complete control over the Debtor and its finances. He is solely responsible for transfers of funds between the Debtor's accounts, as well as transfers from the Debtor to himself.

41. Prior to this bankruptcy proceeding, the Debtor had five bank accounts, which included a general operating account ("Acct. 4971").

42. Mr. Sakaria was the only person who had control of those accounts. A debit card is used in connection with Acct. 4917, and Mr. Sakaria is the only individual with access to that debit card.

43. Mr. Sakaria also is solely responsible for electronic transfers in and out of Acct. 4971.

44. Mr. Sakaria used the funds contained in Acct. 4971 without regard for the difference between business and personal expenditures. In addition to supposed business-related expenses, the Debtor's funds were used to pay for Mr. Sakaria's personal expenses incurred in convenience stores, gas stations, car washes, jewelry stores, furniture stores, pet stores, video game stores, guitar stores, and golf centers.

45. Online, the Debtor's funds were used in connection with online gambling, iTunes purchases, Microsoft Xbox (gaming console) purchases, and transfers of company funds to pay down Mr. Sakaria's personal credit card balances.

46. The Debtor, through the actions of Mr. Sakaria, incurred these non-business expenses while Mr. Sakaria's salary continued to rise.

47. During the alleged period of insolvency of the Debtor (August 2015 to present), Mr. Sakaria used a minimum of $65,000 of the Debtor's assets to pay for personal expenses. Those expenses included:

a. Lease of a Cadillac Escalade driven by both Mr. Sakaria and his wife (approximately $19,260);

b. Reducing balances on Mr. Sakaria's personal credit cards (approximately $26,075);

c. Photography equipment from "New York Camera" and "B&H Photo" (approximately $8,967) that he put to use for personal endeavors (in addition to alleged company endeavors that he could not substantiate);

d. Online gambling activity (approximately $3,290);

e. Flooring for Mr. Sakaria's home (approximately $6,533); and

f. An international excursion to Rio De Janeiro, Brazil with friends and family (approximately $2,592).

48. This amount is ***in addition to*** his $400,000 salary.

49. Moreover, Mr. Sakaria used the Debtor to pay for his home flooring ($6,533) and his trip to Brazil with friends ($2,592) ***after*** the Debtor obtained a high-interest loan from Web Bank, which is one of the claimed reasons that the Debtor was driven into bankruptcy.

50. Mr. Sakaria also used the Debtor's money to fund his online gambling activity just days before filing this bankruptcy petition.

51. Even before the Debtor's alleged period of insolvency, Mr. Sakaria used the Debtor's money for personal gain, including:

a. Thousands of dollars on New Jersey Devil's tickets;

b. Fuel for his vehicles;

c. A squash racket;

d. Personal vacations;

e. Jewelry purchases, including an Apple watch for himself;

f. Guitar Center purchases;

g. Clothing purchases at high-end retailers;

h. Video game purchases; and

i. Family trips to Puerto Rico.

52. Mr. Sakaria did not keep receipts that would permit an independent analysis of whether, in fact, Mr. Sakaria's expenditures were for legitimate business purposes or illegitimate personal expenses. Mr. Sakaria also has not submitted to the Debtor any expense reports since at least 2011.

53. Accordingly, there is no way for Mr. Patel, any other creditor, or this Court to determine whether any expenses are for a legitimate business purpose related to the Debtor.

COUNT ONE
Breach of Contract
(Against the Debtor and Mr. Sakaria)

54. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

55. The Settlement Agreement that resolved the Litigation is a binding contract between Mr. Patel, the Debtor, and Mr. Sakaria.

56. Pursuant to that contract, the Debtor was to remit monthly payments to Mr. Patel as defined in the Settlement Agreement.

57. Mr. Patel has performed all of his obligations pursuant to the Settlement Agreement and was not in breach prior to the Debtor's breach of the Settlement Agreement.

58. On August 1, 2016, the Debtor materially breached the Settlement Agreement by failing to timely remit a monthly payments as called for in the Settlement Agreement.

59. Pursuant to the cure provisions contained in the Settlement Agreement, Mr. Patel issued a Notice of Default to Mr. Sakaria and the Debtor demanding payment. The Debtor failed to timely cure its default.

60. As a result of the Debtor's material breach, Mr. Patel has been damaged in an amount to be proven at trial.

61. Because the Debtor is the alter ego of Mr. Sakaria due to Mr. Sakaria's abuse of the corporate form detailed above, Mr. Sakaria is personally, jointly, and severally liable for any and all damages arising out of the Debtor's breach of the Settlement Agreement.

COUNT TWO
Breach of the Covenant of Good Faith and Fair Dealing
(Against the Debtor and Mr. Sakaria)

62. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

63. As parties to the Settlement Agreement, the Debtor and Mr. Sakaria owed Mr. Patel a duty of good faith and fair dealing.

64. The Debtor and Mr. Sakaria materially breached that duty of good faith and fair dealing by, among other things, (1) routinely failing to make timely payments pursuant to the Settlement Agreement; (2) siphoning corporate funds to finance Mr. Sakaria's personal endeavors (as detailed in these Counterclaims), including paying off personal debts and funding online gambling activity; (3) continuing to misuse corporate assets by paying to Mr. Sakaria an exorbitant $400,000 per year salary after it was known the Debtor was undercapitalized and insolvent; and (4) negotiating an asset purchase agreement with a newly-formed holding company managed by Mr. Sakaria's friend, which provides Mr. Sakaria with an employment agreement and annual compensation equal to what he was siphoning from the Debtor prior to the bankruptcy ($400,000).

65. Because the Debtor is the alter ego of Mr. Sakaria due to Mr. Sakaria's abuse of the corporate form detailed above, Mr. Sakaria is personally, jointly, and severally liable for any and all damages arising out of the Debtor's breach of the covenant of good faith and fair dealing.

66. As a proximate result of the Debtor's and Mr. Sakaria's breach of their duty of good faith and fair dealing, Mr. Patel has been damaged in an amount to be proven at trial.

67. Both the Debtor and Mr. Sakaria acted recklessly, with evil motive, bad faith, actual malice, and in willful disregard for the rights of Mr. Patel, entitling Mr. Patel to an award of punitive damages in an amount to be proven at trial.

COUNT THREE
Breach of Fiduciary Duty
(Against the Debtor and Mr. Sakaria)

68. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

69. Both the Debtor and Mr. Sakaria have alleged that the Debtor was insolvent as early as August of 2015.

70. During that alleged period of insolvency, Mr. Sakaria, as the Debtor's president, chief executive officer, and sole shareholder, owed fiduciary duties to Mr. Patel with respect to the corporation's assets.

71. Those fiduciary duties include, but are not limited to, that officers and shareholders like Mr. Sakaria not prefer one creditor over another, not prefer themselves, and refrain from diverting corporate assets.

72. Mr. Sakaria materially breached the fiduciary duties he owed to Mr. Patel by siphoning funds from the Debtor to, among other things, satisfy lease payments for a Cadillac Escalade driven by both Mr. Sakaria and his wife; pay down balances on Mr. Sakaria's personal credit cards; purchase high end photography equipment used for personal endeavors; fund online gambling activity; purchase flooring for Mr. Sakaria's residence; and pay for an international excursion to Brazil with his friends.

73. As the only person with total control over the use of the Debtor's money, Mr. Sakaria personally participated in and directed the misuse of corporate assets detailed in these Counterclaims.

74. As a proximate result of the Debtor's and Mr. Sakaria's multiple breaches of fiduciary duty, Mr. Patel has been damaged in an amount to be proven at trial.

75. Both the Debtor and Mr. Sakaria acted recklessly, with evil motive and actual malice, and in willful disregard for the rights of Mr. Patel, entitling Mr. Patel to an award of punitive damages in an amount to be proven at trial.

COUNT FOUR
Fraudulent Conveyance (N.J.S.A. §§ 25:2-25(a) & (b)(1))
(Against the Debtor and Mr. Sakaria)

76. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

77. At all times relevant herein, Mr. Sakaria was an insider of the Debtor.

78. At all times relevant herein, Mr. Sakaria made transfers of Debtor assets (as detailed in these Counterclaims) for his personal use at a time when the Debtor was insolvent or within the zone of insolvency.

79. At all times relevant herein, after Mr. Sakaria directed the improper transfer of Debtor assets for his own personal use (as detailed in these Counterclaims), Mr. Sakaria retained control of those assets.

80. At all times relevant herein, the improper transfer of Debtor assets detailed herein were concealed by Mr. Sakaria at the time they were made because he was the only person with access to the Debtor's accounts and was the only person who had a company debit card.

81. At all times relevant herein, it was reasonably foreseeable to Mr. Sakaria and the Debtor that the improper transfers of assets detailed in these Counterclaims would leave the Debtor with insufficient assets to pay claims by potential creditors, such as Mr. Patel.

82. The Debtor and Mr. Sakaria's actions with respect to misuse of company assets (as detailed in these Counterclaims) amount to fraudulent conveyances intended to hinder, delay, or otherwise defraud Mr. Patel and other creditors.

83. The transfers of money from Acct. 4971 to Mr. Sakaria's personal banking, credit, and brokerage accounts were without consideration.

84. The transfers of money from Acct. 4971 to pay for Mr. Sakaria's personal expenses (as detailed in these Counterclaims) were without consideration.

85. The improper transfers of money from Acct. 4971 detailed in these Counterclaims were made when the Debtor was insolvent, in the zone of insolvency, or such transfers rendered the Debtor insolvent.

86. The distribution of the assets of the Debtor to Mr. Sakaria was without a reasonably equivalent value being paid to the Debtor, as a result of which the remaining assets of the Debtor are insufficient to satisfy outstanding obligations such as the Debtor's obligation to Mr. Patel.

87. As the only person with total control over the use of the Debtor's money, Mr. Sakaria personally participated in and directed the fraudulent conveyances detailed in these Counterclaims.

88. Both the Debtor and Mr. Sakaria acted recklessly, with evil motive and actual malice, and in willful disregard for the rights of Mr. Patel, entitling Mr. Patel to an award of punitive damages in an amount to be proven at trial.

COUNT FIVE
Unjust Enrichment
(Against the Debtor and Mr. Sakaria)

89. Mr. Patel incorporates the allegations contained in all of the preceding Paragraphs of this Counterclaim as if fully set forth herein.

90. As set forth above, Mr. Sakaria has been unjustly enriched by his misuse of the Debtor's assets.

91. To allow Mr. Sakaria to retain the benefits of his wrongful siphoning of the Debtor's funds to pay for Mr. Sakaria's personal debts, his luxury SUV, his lavish meals, his home remodeling projects, and his international excursions would be unjust, unfair, and inequitable.

92. As a proximate result of Mr. Sakaria's wrongful actions, Mr. Patel has been damaged in an amount to be determined at trial.

WHEREFORE Defendant/Counterclaimant Ketan P. Patel prays for judgment as follows:

1. Judgment against the Debtor and Mr. Sakaria, jointly and severally, on Counts One through Five of this Counterclaim.

2. Judgment against the Debtor and Mr. Sakaria, jointly and severally, for compensatory damages on Counts One and Two.

3. Judgment against the Debtor and Mr. Sakaria, jointly and severally, for compensatory and punitive damages on Counts Three, Four, and Five.

4. Judgement against the Debtor and Mr. Sakaria, jointly and severally, for reasonable attorney's fees and expenses incurred to prosecute this action in this Court, and on appeal, if necessary.

5. Judgment against the Debtor and Mr. Sakaria, jointly and severally, for prejudgment and post-judgment interest.

6. Judgment against the Debtor and Mr. Sakaria, jointly and severally, for all other and further relief, both at law and in equity, to which Mr. Patel may show himself justly entitled.

DEMAND FOR A JURY TRIAL

Defendant/Counterclaimant Ketan P. Patel demands a jury trial on all issues so triable.

Dated: December 2, 2016

DUANE MORRIS LLP
A Delaware Limited Liability Partnership
One Riverfront Plaza
1037 Raymond Blvd., Suite 1800
Newark, New Jersey 07102
Counsel for Defendant/Counterclaimant Ketan Patel

By: s/ *John J. Zefutie, Jr.*
John J. Zefutie, Jr.

CERTIFICATE OF SERVICE

On December 2, 2016, I caused the foregoing to be filed via ECF and served via regular U.S. mail on the following counsel of record:

Anthony Sodono, III, Esq.
Michele M. Dudas, Esq.
Trenk, DiPasquale, Della Fera & Sodono, P.C.
347 Mount Pleasant Avenue, Suite 300
West Orange, NJ 07052

Brian W. Hofmeister, Esq.
Law Firm of Brian W. Hofmeister, LLC
3131 Princeton Pike
Building 5, Suite 110
Lawrenceville, NJ 08648

I certify under penalty of perjury that the foregoing is true and correct. Executed on December 2, 2016.

s/ *John J. Zefutie, Jr.*
John J. Zefutie, Jr.